

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

PHILIP LEE; PAMELA WHITE;
PATRICIA VANDUSEN; RONALD
ALLIX; and RANDY WELCH,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

BELVOIR MEDIA GROUP, LLC,

Defendant.

Case No. 4:22-cv-12153-SDK-DRG

Hon. Shalina D. Kumar

Mag. David R. Grand

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs, individually and on behalf of all others similarly situated, submit this notice of supplemental authority to apprise the Court of a recent decision relevant to the issues raised in Plaintiffs' response in opposition (ECF No. 19) to Defendant's motion to dismiss (ECF No. 18):

1. On May 19, 2023, the Honorable Bernard A. Friedman issued a decision denying the defendant's motion to dismiss in *Nock v. Boardroom, Inc. d/b/a Bottom Line, Inc.*, Case No. 2:22-cv-11296-BAF-EAS, ECF No. 27 (E.D. Mich. May 19, 2023), a PPPA action similar to the instant matter. A copy of the *Nock* decision is attached hereto as Exhibit A.

2. In *Nock*, the court held that "Article III standing poses no obstacle to [Plaintiff's] PPPA claim" in light of the Sixth Circuit's controlling decision in *Coulter-Owens v. Time Inc.*, 695 F. App'x 117 (6th Cir. 2017) and the "district courts in this circuit [that] have consistently followed *Coulter-Owens*["] *See Nock*, at 7 (collecting cases).

3. The court in *Nock* also held that the six-year limitation period found in M.C.L. § 600.5813 applied to plaintiff's PPPA claim. *See id.*, at 8 (noting that "countless opinions" from Michigan's federal courts have "yielded the same outcome – that the PPPA's limitation period is six years").

4. Finally, the court found that the complaint's allegations – which are less detailed than the allegations of the operative complaint in this case – "are more than

adequate to show that [the defendant] plausibly violated the PPPA[.]” *Id.*, at 9. The court rejected the defendant’s argument, also made by Defendant in this case, that “the screenshot of NextMark’s website is not particularized enough to support [plaintiff]’s allegations,” finding that “[t]his argument misconceives how pleadings are evaluated on a Rule 12(b)(6).” *Id.*, at 10 (explaining that “no ‘evidentiary support’ – whether ‘in an affidavit or any other form’ – is necessary ‘for a claim to be plausible’”) (quoting *Gallivan v. United States*, 943 F.3d 291, 293 (6th Cir. 2019)). Thus, the court found the decision in *Nashel v. N.Y Times Co.*, No. 22-10633, 2022 U.S. Dist. LEXIS 185552 (E.D. Mich. Oct. 11, 2022) – which Defendant relies heavily upon in its motion to dismiss here – “unpersuasive” for the same reason. *See id.*, at 11 (citing *Gaines v. Nat’l Wildlife Fed’n*, No. 22-11173, 2023 U.S. Dist. LEXIS 75317, at *20-23 (E.D. Mich. May 1, 2023)). Accordingly, the court denied the defendant’s motion to dismiss in its entirety. *See id.* (“Because [plaintiff] states a plausible claim for relief under the PPPA – even without the embedded NextMark screenshot – her allegations are alone sufficient to withstand Rule 12(b)(6) scrutiny.”).

Dated: May 22, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2023, I electronically filed the foregoing documents using the Court's electronic filing system, which will notify all counsel of record authorized to receive such filings.

/s/ E. Powell Miller

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